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TO 3600 MAIL ROOM

Atty. Dkt. No. 1423-9  
Ser. No. 09/428,508

appropriate to correct the type. Applicant appreciates the Examiner's kindness in pointing out the typo.

The drawings are corrected by a separate paper.

Claim 23 was corrected in the Preliminary Amendment to depend from only claim 1. The dependency has now been changed to claim 1.

The expression "and/or" has been changed to "or" or to "and" as may be appropriate. It is thought that, after the patent issues, a judge would construe the claims under the Doctrine of Equivalent in the same manner that he would construe them if this Amendment had not been made.

#### Claims Rejections under USC § 102

As will be appreciated from an inspection of the German Bock patent (especially Figure 5), the central axis of each tire in Bock is aligned with the vertical and is not inclined. Hence Bock is irrelevant to claim 1, 3, 4, 5, 6 and 7.

The Examiner's view is that claims 25, 29, 30, 31 and 34 are anticipated by Bock. In particular, as can be gleaned from the verified translation, Bock does not disclose anything regarding the formation of a base or a retaining wall, which is an essential feature of applicants' invention, in general, and specifically in independent claim 25.

Independent claim 15, and its dependent claims disclose a reinforcing section of the retaining wall which is formed by lengths of tire tread or conveyor belt. On a closer inspection of Bock Figure 4, the connection of the tires employs wires or bracing made from steel. This does not



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in anyway resemble a reinforcing section made from the lengths of tire tread or conveyor belt. The same argument also applies to independent claim 40 and its dependent claims.

### Claims Rejections under USC § 103

The Examiner is arguing that a construction of a retaining wall having this inclined configuration would have been obvious in the art. Bock does not disclose a retaining wall in which the central axis of each tire is inclined in both the vertical and horizontal directions. Moreover, the Examiner has not provided any evidence or factual reason for drawing his conclusion of obviousness. If it had been so obvious, why, in a relatively mature art, has no one used to this technique? Hence, in the absence of evidence of obviousness, applicant calls for the affidavit under 37 CFR 1.104(d)(2).

Off-setting one course with respect to the next and overlying course has been employed both with concrete and stone walls and also with tires (see e.g. US 4,080,793). However, the inventors have developed a technique for working and preparing the ground in front of an embankment in a manner such that tires can then be placed thereon in courses with their central axis inclined, which results in a stable retaining wall. Hence, in the absence of any evidence in the art or affidavit of personal knowledge, the application should be allowed.

It is noted that page 6, Paper No. 5 lists claims 8-14, 18-20, 33, 36, 43 and 47 as being allowable after certain amendments are made. Applicants have made as many of the amendments as can be made without introducing new independent claims. Needlessly introducing new



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independent claims would only enhance costs for both applicant and the U.S. taxpayer who has to pay the cost of excessive printing. It is thought that these and other claims will now be allowed. If these claims are not allowed, applicants reserve the right to submit the allowable claims in an independent form, as may then be necessary.

Claim 1 is allowable since a central axis of each tire is inclined to the vertical. Claim 2 adds the batter angle of 10°-20°. Claim 15 requires a reinforcing section formed by parts cut from tires. Claim 25 calls for a base for the retaining wall. Claim 36 describes how an uncut portion of a tire acts as a hinge. The remainder of the claims depend on and add further limitations to one of these independent claims.

For the foregoing reasons it is thought that the application is in condition for allowance. If the Examiner should find any reason for not allowing the application, he is respectfully requested to telephone the undersigned attorney. Any reasonably necessary amendments will be made promptly.

Reconsideration and allowance are requested.

Dated: 3/16/01

Respectfully submitted,

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of *F. barcelonnette*, dim. of *ber-*  
ketlike bed (as of wickerwork or  
end 2: a perambulator that

on who plays an acoustic or elec-

*bas-si* \bäs-ē\ [It. fr. *ML bassus*,  
inger; esp: an operatic bass.  
It *bassone*, fr. *basso*] (ca. 1727): a  
having a long U-shaped conical  
y a thin metal tube and a usual  
of the oboe — *bas-sonist* \-sü-

*lō*, *bäs-*, \-fün- \ *n*, *pl* *basso* *profun-*  
p heavy bass voice with an excep-  
tionally low voice  
\bas-(-)d-n-(-)vō, \bäs-(-)d-rē-  
low + *rilevo* relief] (1666): *BAS-*

**A 2: DOUBLE BASS**  
any of several New World lindens;  
ined white wood of a basswood  
to OHG & ON *basi*] (bef. 12c) 1

(13c) 1: an illegitimate child 2  
gular, inferior, or of questionable  
ceable person — used as a general-  
— *bas-tardly* *adj*

**TE 2:** of inferior breed or stock  
or irregular size 4: of a kind simi-  
han some standard (~ measles) 5  
FALSE  
izing (ca. 1611) 1: to declare or  
e from a higher to a lower state or  
ion \bas-tard-a-(-)zā-shən\ *n*

**es** (15c) 1: the quality or state of  
? : the begetting of an illegitimate

*ME basten*, fr. *MF bastir*, of *Gmc*  
\OE *bast* *bast*] (15c): to sew with  
something in place temporarily —

*known*] (15c): to moisten (as meat)  
1 butter, fat, or pan drippings) esp.

**ON beysta**: akin to OE *bēatan* to  
or soundly: *THRASH* 2: to scold

body fiber obtained chiefly from the  
ordage, matting, and fabrics  
r. the *Bastille*, fortress in Paris used

erved in France as a national holiday  
- Bastille in 1789

*ad-* \ or *bas-ti-nade* \bas-ti-*nād*,  
b *bastonada*, fr. *bastón* stick, fr. LL  
a stick or cudgel 2 a: a beating  
at consisting of beating the soles of  
GEL

to subject to repeated blows  
action of a sewer who bastes 2 a  
e stitching made by basting  
one that bastes food 2: the liquid

*ille* fortress, modif. of *OProv bastida*,  
akin to OHG *besten* to patch] (1562)  
tion 2: a fortified area or position  
stronghold: *BULWARK* — *bas-tioned*

or *Basutos* (1835): one of the Bantu

rob. of Celt origin; akin to Gaulish  
BATTLE] (bef. 12c) 1: a stout solid  
TROKE 3 a: a wooden implement  
games b: a paddle used in various  
short whip used by a jockey 4 a  
— usu. used in the phrase *at bat* 5  
AIT 7: BINGE — off one's own bat  
f: the bat: without delay: IMMEDI-

to strike or hit with or as if with a  
inner) by batting b: to have a bat-  
length: consider in detail ~ vi 1 a  
b: to take one's turn at bat 2: to

of Scand origin; akin to OSw *natt-*  
r (Chiroptera) of nocturnal placental  
ified to form wings  
er of *bate*] (1838): to wink esp. in  
an eye)

by employed to look after the equip-

to OE *bacan* to bake] (15c) 1: the  
KING 2 a: the quantity of material  
ation; *specif*: a mixture of raw mate-  
the quantity produced at one oper-  
on a computer at one time with the  
a group of persons or things: LOT  
ther or process as a batch — *batcher*

*bate* \bat\ *vb* *bat-ed*; *bat-ing* [ME *baten*, short for *abaten* to abate] *vi*  
(14c) 1: to reduce the force or intensity of: RESTRAIN (with *bated*  
breath) 2: to take away: DEDUCT 3 *archaic*: to lower esp. in  
amount or estimation 4 *archaic*: BLUNT ~ *vi*, *obs*: DIMINISH. DE-  
CREASE

*bate* *vi* *bat-ed*; *bat-ing* [ME *baten*, fr. *MF battre* to beat — more at *DE-*  
BATE] of a falcon (14c): to beat the wings impatiently  
*bateau* \ba-*tō* \ *n*, *pl* *bateaux* \-tō-z\ [CanF, fr. F, fr. OF *batel*, fr. OE  
*bāt* boat — more at *BOAT*] (1711): any of various small craft; esp: a  
flat-bottomed boat with raked bow and stern and flaring sides  
*Batesian* \bat-sē-*ən* \ *adj* [Henry Walter Bates †1892 Eng. naturalist]  
(1896): characterized by or being mimicry involving resemblance of  
an innocuous species to another that is protected from predators by  
repellent qualities (as unpalatability) (~ mimic)

*bat-fish* \bat-*fish* \ *n* (ca. 1889): any of several fishes with winglike  
processes; esp: any of a family (Ogcocephalidae) of flattened pedicu-  
late fishes (as a common West Indian form *Ogcocephalus vespertillo*)  
*bat-fowl* \-fau\ *vi* (15c): to catch birds at night by blinding them with  
a light and knocking them down with a stick or netting them

*bath* \bath\ *n*, *pl* *baths* \bathz, \baths, \bāthz, \bāths [ME, fr.  
OE *bāth*: akin to OHG *bad* bath, OE *bacan* to bake] (bef. 12c) 1: a  
washing or soaking (as in water or steam) of all or part of the body 2  
a: water used for bathing b (1): a contained liquid for a special  
purpose (2): a receptacle holding the liquid c (1): a medium for  
regulating the temperature of something placed in or on it (2): a  
vessel containing this medium 3 a: BATHROOM b: a building con-  
taining an apartment or a series of rooms designed for bathing c: SPA  
— usu. used in pl. 4 a: the quality or state of being covered with a  
liquid b: FLOOD 3 5: BATHTUB

*bath* *vi*, *Brit* (15c): to give a bath to ~ *vi*, *Brit*: to take a bath  
*bath* *n* [Heb] (14c): an ancient Hebrew liquid measure corresponding  
to the ephah of dry measure

*bath-* or *batho-* *comb form* [ISV, fr. Gk *bathos*, fr. *bathys* deep — more at  
BATHY-]: depth (bathometer)

*bath chair* \bath-, \bath- \ *n*, often cap B [Bath, England] (1823): a  
hooded and sometimes glassed wheeled chair used esp. by invalids;  
broadly: WHEELCHAIR

*bathe* \bath\ *vb* *bat-hed*; *bat-hing* [ME *bathen*, fr. OE *bathian*; akin to  
OE *bæth* bath *vi* (bef. 12c) 1: to wash in a liquid (as water) 2  
MOISTEN. WET 3: to apply water or a liquid medicament to 4: to  
flow along the edge of: LAVE 5: to suffuse with or as if with light ~  
vi 1: to take a bath 2: to go swimming 3: to become immersed  
or absorbed — *bather* \bā-*thər* \ *n*

*bathe* *n* (1831) 1 *Brit*: BATH 1 2 *Brit*: SWIM. DIP  
*bath-et-ic* \bā-*thet-ik* \ *adj* [bathos + *-etic* (as in *pathetic*)] (ca. 1864)  
: characterized by bathos — *bath-et-ic-ally* \-ik(-)lē\ *adv*

*bath-house* \bath-*hāus*, \bath- \ *n* (14c) 1: a building equipped for  
bathing 2: a building containing dressing rooms for bathers  
*bathing beauty* *n* (1920): a woman in a bathing suit who is a contestant  
in a beauty contest

*bathing suit* *n* (1873): SWIMSUIT  
*bath mat* *n* (1895): a usu. washable mat used in a bathroom  
*batho-lith* \bath-*ō*-*lith* \ *n* [ISV] (1903): a great mass of intruded igne-  
ous rock that for the most part stopped in its rise a considerable dis-  
tance below the surface — *batho-lith-ic* \bath-*ō*-*lith-ik* \ *adj*

*bathom-eter* \bā-*thām-et-ər* \ *n* (1875): an instrument for measuring  
depths in water

*bathos* \bā-*thās* \ *n* [Gk, lit., depth] (1727) 1 a: the sudden appear-  
ance of the commonplace in otherwise elevated matter or style b  
ANTICLIMAX 2: exceptional commonplaceness: TRITENESS 3: in-  
sincere or overdone pathos: SENTIMENTALISM

*bath-robe* \bath-*rōb*, \bath- \ *n* (1902): a loose usu. absorbent robe  
worn before and after bathing or as a dressing gown  
*bath-room* \-*rūm*, \-*rūm* \ *n* (1780) 1: a room containing a bathtub or  
shower and usu. a washbowl and toilet 2: LAVATORY 2

*bath salts* *n* *pl* (1907): a usu. colored crystalline compound for perfum-  
ing and softening bathwater  
*bath-tub* \-*təb* \ *n* (1869): a usu. fixed tub for bathing

*bathub gin* *n* (1930): a homemade spirit concocted from raw alcohol,  
water, essences, and essential oils  
*bath-wa-ter* \bath-*wōt-ər*, \bath-, \wāt-*ər* \ *n* (1912): water for a bath  
*bath- comb form* [ISV, fr. Gk, fr. *bathys* deep; akin to Skt *gāthā* he  
dives into] 1: deep: depth (bathyal) 2: deep-sea (bathy-  
sphere)

*bathy-al* \bath-*ē*-*əl* \ *adj* (1921): of or relating to the ocean depths or  
floor usu. from 600 to 6000 feet (180 to 1800 meters)

*bathym-etry* \bā-*thīm-ē*-*trē* \ *n*, *pl* *-tries* [ISV] (ca. 1864): the measure-  
ment of depths of water in oceans, seas, and lakes; also: the informa-  
tion derived from such measurements *bathym-etric* \bath-*i*-*met-ik* \  
-*trē* \ *adv*

*bathy-pelagic* \bath-*i*-*pē*-*laj-ik* \ *adj* [bathy- + *pelagic*] (ca. 1909): of,  
relating to, or living in the ocean depths esp. between 2000 and 12,000  
feet (600 and 3600 meters)

*bathy-scaphe* \bath-*i*-*skaf*, \-*skāf* \ *also* *bathy-scap* \-*skaf* \ *n* [ISV  
*bathy* + Gk *skapē* light boat] (1947): a navigable submersible ship  
for deep-sea exploration having a spherical watertight cabin attached  
to its underside

*bathy-sphere* \-*sfi*(*ə*)*r* \ *n* (1930): a strongly built steel diving sphere for  
deep-sea observation

*bathy-ther-mo-graph* \-*thər-mō*-*grāf* \ *n* (1938): an instrument designed  
to record water temperature as a function of depth  
*bat-ik* \bā-*tēk*, \bat-*ik* \ *n* [Malay] (1880) 1 a: an Indonesian method  
of hand-printing textiles by coating with wax the parts not to be dyed  
b: a design so executed 2: a fabric printed by batik

*bat-ing* \bat-*ing* \ *prep* (1647): with the exception of: EXCEPTING  
*bat-iste* \bā-*tēst*, \bā- \ *n* [F] (1697): a fine soft sheer fabric of plain  
weave made of various fibers

*bat-man* \bat-*mən* \ *n* [deriv. of Gk *bastazein* to carry] (1755): an or-  
derly of a British military officer  
*bat mitzvah* \bat-*mits-vā* \ *often* cap B & M, var of *BAS MITZVAH*  
*bat-on* \bā-*tān*, \bā-, \-*tō* \ *n* also *bat-*n** \ *n* [F *bâton*, fr. OF *baston*, fr. LL  
*batum* stick] (1520) 1: CUDGEL TRUNCHEON 2: a staff borne as a  
symbol of office 3: a narrow heraldic bend 4: a slender rod with

which a leader directs a band or orchestra 5: a hollow cylinder car-  
ried by each member of a relay team and passed to the succeeding run-  
ner 6: a hollow metal rod with a weighted bulb at one or both ends  
that is flourished or twirled by a drum major or drum majorette  
*bat out* *vt* (1941): to compose esp. in a casual, careless, or hurried man-  
ner

*bat-ra-chi-an* \bā-*trā-kē-ən* \ *n* [deriv. of Gk *batrachos* frog] (ca. 1828)  
: FROG, TOAD, SALIENTIAN; broadly: a vertebrate amphibian — *batra-*  
*chian* *adj*

*bats* \bats\ *adj* (1919): BATTY 2  
*bats-man* \bat-*smən* \ *n* (1756): a batter esp. in cricket  
*batt* \bat\ *n* (1871): BATTING 2; also: an often square piece of batting

*bat-tal-i-ous* \bat-*l*-*ōs* \ *adj* [ME *bataillous*, fr. MF *bataillos*, fr. *bataille*  
*battle*] *archaic* (14c): ready for battle: WARLIKE  
*bat-ta-lia* \bā-*tāl-yā*, \-*tāl* \ *n* [It *battaglia*] (1569) 1 *archaic*: order of  
battle 2 *obs*: a large body of men in battle array

*bat-tal-ion* \bā-*tāl-yən* \ *n* [MF *bataillon*, fr. OIt *battaglione*, aug. of  
*battaglia* company of soldiers, battle, fr. LL *battalia* combat — more at  
BATTLE] (1579) 1: a considerable body of troops organized to act  
together: ARMY 2: a military unit composed of a headquarters and  
two or more companies, batteries, or similar units 3: a large group (as  
~ of holiday shoppers)

*bateau* var of *BATEAU*  
*bateu-ment* \bat-*ō*-*mān* \ *n* [F, fr. *battre* to beat (fr. L *battuere*) +  
-ment — more at BATTLE] (1830): a ballet movement in which the foot  
is extended in any direction usu. followed by a beat against the sup-  
porting foot

*bat-ten* \bat-*n* \ *vb* *bat-tened*; *bat-ten-ing* \bat-*n*-*ing*, \-*n*-*ing* \ [prob. fr.  
ON *batna* to improve, akin to OE *betera* better] *vi* (1591) 1 a: to  
grow fat b: to feed gluttiously 2: to grow prosperous esp. at the  
expense of another ~ *vt*: FATTEN

*batten* *n* [F *bâton*] (1658) 1 a *Brit*: a piece of lumber used esp. for  
flooring b: a thin narrow strip of lumber used esp. to seal or rein-  
force a joint 2: a strip, bar, or support resembling or used similarly  
to a batten

*batten* *vi* *bat-tened*; *bat-ten-ing* \bat-*n*-*ing*, \-*n*-*ing* \ (1663): to furnish or  
fasten with battens — often used with *down*

*bat-ter* \bat-*ər* \ *vb* [ME *bateren*, prob. freq. of *batten* to bat, fr. *bat*] *vi*  
(14c) 1 a: to beat with successive blows so as to bruise, shatter, or  
demolish b: BOMBARD 2: to subject to strong, overwhelming, or  
repeated attack 3: to wear or damage by hard usage or blows (as ~ed  
old hat) ~ *vi*: to strike heavily and repeatedly: BEAT *syn* see *MAIM*

*batter* *n* [ME *bater*, prob. fr. *bateren*] (14c) 1: a mixture consisting  
chiefly of flour, egg, and milk or water and being thin enough to pour  
or drop from a spoon 2: an instance of battering

*batter* *n* (1743): a receding upward slope of the outer face of a struc-  
ture

*batter* *vi* [origin unknown] (ca. 1909): to give a receding upward slope  
to (as a wall)

*batter* *n* (1773): one that bates; esp: the player whose turn it is to bat  
*bat-ter-ie* \bat-*ər*-*ē* \ *n* [F, lit., beating — more at BATTERY] (1712): a  
ballet movement consisting of beating together the feet or calves of the  
legs during a leap

*battering ram* *n* (1611) 1: a military siege engine consisting of a large  
wooden beam with a head of iron used in ancient times to beat down the  
walls of a besieged place 2: a heavy metal bar with handles used  
(as by firemen) to batter down doors and walls

*bat-tery* \bat-*ər*-*ē*, \bat-*trē* \ *n*, *pl* *-ter-ies* [MF *batterie*, fr. OF, fr. *battre* to  
beat, fr. L *battuere* — more at BATTLE] (1531) 1 a: the act of bat-  
tering or beating b: the unlawful beating or use of force on a person  
without his consent — compare ASSAULT 2a 2 a: a grouping of artill-  
ery pieces for tactical purposes b: the guns of a warship 3: an  
artillery unit in the army equivalent to a company 4 a: a combina-  
tion of apparatus for producing a single electrical effect b: a group of  
two or more cells connected together to furnish electric current; also  
: a single cell that furnishes electric current (a flashlight ~) 5 a:  
number of similar articles, items, or devices arranged, connected, or  
used together: SET. SERIES (as ~ of tests) b: an impressive or impos-  
ing group: ARRAY 6: the position of readiness of a gun for firing 7  
: the pitcher and catcher of a baseball team

*batting* \bat-*ing* \ *n* (1611) 1 a: the action of one who bats b: the  
use of or ability with a bat 2: layers or sheets of raw cotton or wool  
or of synthetic fibrous material used for lining quilts or for stuffing or  
padding; also: a blanket of thermal insulation (as fiberglass)

*batting average* *n* (1867) 1: a ratio (as a rate per thousand) of base hits  
to official times at bat for a baseball player 2: a record of achieve-  
ment or accomplishment

*bat-tle* \bat-*l* \ *n*, *often* attrib [ME *batel*, fr. OF *bataille* battle, fortify-  
ing tower, battalion, fr. LL *battalia* combat, alter. of *battualia* fencing  
exercises, fr. L *battuere* to beat, of Celt origin; akin to Gaulish *an-*  
*dabata*, a gladiator; akin to L *fatuus* foolish, Russ *bat cudgel*] (13c) 1  
: a general encounter between armies, ships of war, or airplanes 2  
: a combat between two persons 3 *archaic*: BATTALION 4: an extended  
contest, struggle, or controversy

*battle* *vb* *bat-tled*; *bat-tling* \bat-*l*-*ing*, \-*l*-*ing* \ *vi* (14c) 1: to engage in  
battle: FIGHT 2: to contend with full strength, vigor, craft, or re-  
sources: STRUGGLE ~ *vi* 1: to fight against 2: to force (as one's  
way) by battling — *bat-tler* \-*lār*, \-*l*-*ər* \ *n*

*battle* *vi* *bat-tled*; *bat-tling* [ME *bataillen*, fr. MF *bataillier* to fortify, fr.  
OF, fr. *bataille*] *archaic* (14c): to fortify with battlements

*bat-tle-ax* \bat-*l*-*aks* \ *n* (14c) 1: a broadsword formerly used as a  
weapon of war 2: a quarrelsome domineering woman

*battle cruiser* *n* (1911): a large heavily armed warship that is lighter,  
faster, and more maneuverable than a battleship

*battle cry* *n* (1814): WAR CRY

*battle fatigue* *n* (1945): COMBAT FATIGUE — *bat-tle*-*fatigued* *adj*

\ə\ *about* \kitten\ *F* *table* \-*ər* \ *further* \ə\ *ash* \ā\ *ace* \ā\ *cot*: *cart*  
\ə\ *out* \ch\ *chin* \ē\ *bet* \ē\ *easy* \ē\ *go* \i\ *hit* \i\ *ice* \i\ *job*  
\j\ *sing* \j\ *go* \j\ *law* \ō\ *boy* \th\ *thin* \th\ *lo* \lō\ *foot*  
\f\ *yet* \zh\ *vision* \ā\ *k*, *g*, *æ*, *ē*, *ū*, *ē*, *ū*, *ē*, *ū* *see* Guide to Pronunciation

# VERIFICATION OF TRANSLATION

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MAR 26 2001

MAIL ROOM

I, (name & address of translator) Dr. Andreas J. Hartmann of 45 Newman Street,  
Newtown, New South Wales 2042, Australia

state the following:

I am fluent in both the English and German languages and capable of translating documents from one into the other of these languages.

The attached document is a true and accurate English translation to the best of my knowledge and belief of: **German document DE 85 13 539 by Manfred Bock**

Signature:

Andreas J. Hartmann

Date:

12 - 3 - 01





## Description

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This invention is based on retaining wall for a mound on which plants can be planted and which can be used for noise protection.

Noise protection walls are known in different designs.

The construction of noise protection walls, on which plants can be planted, is costly if preformed concrete parts are being used. This invention is based on the usage of a waste product of our society, which has a problematic disposal, for the design of a noise protection wall.

It is an object of the invention that a spherical body of rubber, eg. a tyre, has been cut off in the area of the measurement strip of one side of the tyre, has been shaped like a basin and has an opening (3) in the centre of the ground-plate (2) and some openings in the tread segment (1).

The plant containers are interconnected using wire or bracings made from non-rusting steel and from a lattice which is filled up with soil layer-by-layer.

Segments for hanging plants are formed at the ends of the layers.

For higher noise protection walls, with the height being above a certain limit, chains with links made from flat pieces of steel are used to connect the plant containers.

Within a short period of time the roots of the plants will grow through the lattice described above which will result in additional stability, and the visible rubber side of the construction will be grown over. This will result in a noise protection wall that fits in harmonically into the landscape.

Fig. 1: Cross section through spherical body made from rubber, with tread segment (1), ground plate (2) with spherical hole (3) and openings for connectors (4).

Fig. 2: A-a horizontal cross section.

Fig. 3: Perspective view of above.

Fig. 4: Example of two parallel chains of tyres connect with belts.

Fig. 5: Vertical view of a range of tyre layers which positioned in a displaced manner.

Fig. 6: Diagonal view of a tyre wall with segment-like plant containers.